LETTER

TO

WILLIAM EWART, ESQ., M.P.,

Chairman of the Select Committee of the House of Commons

ON

COLONIZATION & SETTLEMENT IN INDIA

BY

JOHN WARDEN, ESQ.,

SOME TIME

Member of the Government of Bombay, and President of the Board of Education at that Presidency.

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London:
W. J. KENNY, HEATHCOCK COURT, 414, STRAND.

1859.

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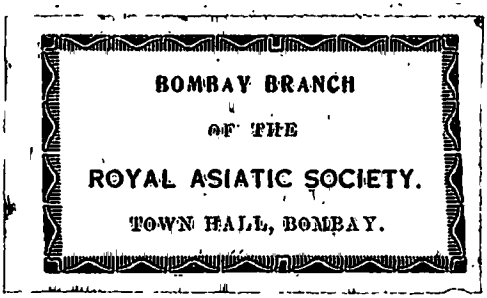

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To WILLIAM EWART, ESQ., M.P., Chairman of the Select Committee of the House of Commons on Colonization and Settlement in India.

10, Wilton-street, Belgrave-square,
4 March, 1859.

Sir,

I YESTERDAY received your permission to address you in vindication of the evidence I had the honour to give last Session, from the imputations which Captain Cowper has cast upon it; and, in compliance with your desire, I will make my statement as short as possible.

The tone of Captain Cowper's paper suggests that I must be at enmity with the Enam Commissioners; but I have no such feeling, and on my first examination I requested I might not be required to mention names; I came before you to discuss principles, not persons, and it is quite beneath me to allow public discussion on important questions to degenerate into personalities. My only object was to place before the Committee, with accuracy and impartiality, the premises from which their conclusions are to be drawn, as to whether, on considerations of political expediency as well as of intrinsic justice, we are to hand down to our posterity the aristocracy and middle classes of India in the state in which we found them, or whether, by a gradual but certain process, we shall grind them down to the level of those who cultivate the soil.

Captain Cowper has written his paper surrounded by the records of the Mahratta and British Governments. From the time I left India I ceased to read Indian records, and have not even inquired the result of discussions in which I "took a prominent part," and I came before the Committee, at short notice and unsought by me, to speak from memory of events which happened 40 years ago; and yet, I think, I can now go to book and prove, by reference to authorities, that I understated the case against the Enam Commission.

I will first refer to the main points at issue between Captain Cowper and myself (viz., whether a law of prescription and a right of adoption did exist in the Deccan previous to the Enam Commission?) before I advert to those of his statements which are personal to myself. There seems to have been a misunderstanding of a portion of my former evidence on cross-examination with regard to the first point: the law of prescription. I have been mistakenly supposed to admit that this law was not introduced into the Deccan. I will explain how I was misunderstood on this point.

In Answer 6066, I told the Committee that "in the Peishwa's country some modifications in the general system of laws were made, the most important of which, as affecting the rights of the people, was the provision by which it was enacted that claims against the Government, on account of enams, should not be cognisable in the courts of justice."

This answer was strictly accurate; but in answer to a question of Mr. Willoughby, as to whether Mr. Elphinstone himself excluded the Deccan from "the code of 1827," I said, "Yes;" and in answer to the Question 7468, as to whether the law of prescription was ever introduced into the Deccan, I answered, "No; what I say is that, when they came to legislate for the Deccan, they should have extended to the Deccan the laws of prescription which had been given to Guzerat." There is an apparent contradiction here in favour of

the Enam Act; but it is so notorious that "the code" itself was introduced into the Deccan on the 1st August 1827 (when Mr. Elphinstone was still in India), "with certain modifications," that I understood Mr. Willoughby to allude, as I have no doubt he did allude, not to "the code" bodily, but to that modification of it to which I had drawn attention, viz., that "claims against Government on account of enams should not be cognisable by the civil courts:" the law of prescription was introduced into the Deccan, and, to the best of my recollection, even before the promulgation of the code as law, it was sent to the Deccan, that the civil officers might be guided by its spirit; but the power of enforcing the law of prescription, as regarded rent-free tenures, through the instrumentality of the civil courts, was withheld.

The Elphinstone Code was promulgated to the whole Presidency, with a preamble that it is essential to good government that the rules by which the administration of the country is conducted should be publicly known; that all regulations affecting in any respect the rights, persons, or property of its subjects, should be formed into a regular code; and that such regulations should be of paramount authority, on the points which they determine, to all other acts, orders, or measures of Government. Of this code, the Regulation which affects the "rights, persons and property of the subjects" is Regulation XVII., which contains the law of prescription, the preamble of which announces that it is expedient, with a view to the protection of the rights of the State and individuals, that the titles held to confer a right, except in times of exigency, to entire or partial exemption from the payment of revenue, should be declared. By this regulation, whenever land has been enjoyed exempt from the payment of public revenue for more than 60 years (which 60 years were reduced to 30 years by Regulation VI. of A.D. 1833) in succession by any person, his heirs, or others deriving

right from him, such enjoyment shall be considered a sufficient title to exemption.

This, then, is the general law of prescription of the Elphinstone Code, promulgated to the whole Presidency of Bombay by Regulations translated into the native language, in order that "the rules by which the administration of the country is conducted should be publicly known." The enactments of this code are often based on the laws of the mother country, and it is accordingly enacted, in the 26th section of the IV. Regulation, that the rule to be observed in the trial of suits shall be, 1st, Acts of Parliament and regulations of Government applicable to the case. In this instance, if I am correctly informed, the law of prescription in England and by the Elphinstone Code are identical, the 9 of Geo. 3, c. 16, limiting the right of the Crown to sue, to 60 years after the right accrues; so that, even on the principle which has been urged before the Committee, of *nullum tempus occurrit Regi*, the Enam Act of 1852 was an infraction of the law of prescription. The Government, at the conquest of the country, exercising the *nullum tempus* privilege, had published to the people, in the most solemn manner, that 60 years and (afterwards) 30 years' possession should constitute a prescriptive title; and therefore it only remains to show that the prescriptive law was not modified in respect to the provinces governed by the Peishwa. The code was extended to that province by a Regulation, the preamble of which announces that it has been judged expedient to bring the territories in the Deccan and Candeish under the revised regulations, being the first XXVI. Regulations of 1827 (including, therefore, Regulation XVII., the law of prescription), with certain modifications; the modification of Regulation XVII. of 1827 having reference to its 49th section, which enacts that the holder of land shall be at liberty to institute an original suit in the Zillah Court against the Collector. With this exception, Regulation XVII. of 1827 was

promulgated in the Deccan, as law, and my answers to Mr. Willoughby are therefore an example of my having understated the case against the Act XI. of 1852, by which the proceedings of the Enam Commission are governed.

On the right of prescription and the privilege of succession by adoption, the continued existence of the enamdars depends. I have shown that the right of prescription has been invaded; in regard to the privilege of succession by adoption, I told the Committee that this privilege of succession by adoption had been taken away in breach of a promise of Mr. Elphinstone. Here, again, I understated the case against the Enam Commission; as I should have said, that this privilege was taken away in breach of a promise made by Mr. Elphinstone, confirmed by Sir John Malcolm, a second time promulgated by Lord Clare, and ratified by the Court of Directors.

Since I had the honour of appearing before the Committee, I have seen, for the first time, a volume entitled, "Selections from the Records of the Bombay Government, No. 28, New Series;" and have had an opportunity of referring to a work entitled, "The Government of India," by Sir John Malcolm, from which I proceed to lay before the Committee the following information:

In December 1824, the Collector of Poonah submitted two petitions from two women, claiming the privilege of adopting a son; and as the continuance of some enam grants was dependent upon the permission granted to either, the decision of Mr. Chaplin, the Commissioner in the Deccan, on the question, was asked. The correspondence between these two officers, on this case, was submitted for the consideration and orders of Mr. Elphinstone's government, who answered, that enam lands, being private property, it is desirable that the owner should be enabled to dispose of them as he pleases; but as there might be danger in hastily altering an established practice, as to disposing of enams by

will, and as to adoption in such cases by widows, the Commissioner was requested to ascertain the established practice throughout the country, both before and during the reign of the late Peishwa; the result of which inquiry was, a decision by Mr. Elphinstone's government, that it should be admitted "as a general rule in the Deccan, that children, adopted with such forms and sanctions as may have been usual, should succeed to enam lands, or whatever should be considered private property." In two years and a half from this time Mr. Elphinstone left India; and I learn from a minute by his successor, Sir John Malcolm, that "this question of adoption by enamdars came again under discussion, in consequence" (says Sir John Malcolm) "of two widows of a deceased enamdar in the northern concan having agreed about the adoption, by one of them, of a boy, who at once entered upon the enjoyment of the enam; a question arose as to the validity of an enam, by an adoption to which the sanction of Government had not been previously obtained." In the instance alluded to, Sir John Malcolm goes on: "The adoption had not received such sanction, and the Collector therefore thought the enam escheated to the Government. Permission however had never been refused, having never been applied for; and I was of a different opinion from the Collector, in whose view of the case one of my colleagues, Mr Warden,* coincided. The result of inquiries that were instituted confirmed the conclusions I had drawn from my observations in different parts of India; which were, that though adoption was, as regarded surinjams and jaghier lands, vitiated by the want of permission from the ruling authority, the same consequences did not follow in respect to enams, which are often subject to nuzzur, but on discharge of specific obligations stated in the sunnud or

* Francis Warden, Esq., who was a member of Sir John Malcolm's government.

established by long usage, are confirmed as property in inheritance; and that when an enam is so held, the right exists to transfer by adoption, according to the Hindoo law. Upon this principle the right of inheritance to the enam was not disputed, and the adopted son continued in possession. It may be added, that there is no right which, among Hindoos, is held more sacred than that of adoption. It is a sin not to adopt; and among other obligations of duty, when there is no direct heirs, the adopted son lights the funeral pile of his deceased father."

It is impossible to overrate the importance of this decision on the question before me; it is the result of inquiries instituted on the spot, only 13 years after the conquest of the Deccan, and confirms the conclusion at which Mr. Elphinstone had arrived five years before, as well as the conclusions which Sir John Malcolm said he himself had drawn from observations in different parts of India.

The following year, however, I find Lord Clare (Sir John Malcolm's successor) recording that, "from several papers which had come before him, it appeared that the collectors did not exactly know in what case Government allowed adoptions; misconceptions having again arisen from discussions respecting a tax on succession;" and once more, to remove all doubt, his Lordship promulgated, word for word, the decision of Mr. Elphinstone's government; once more publicly pledging the faith of the British Government that, "children adopted with such forms and sanctions as may have been usual, should succeed to enam lands;" and if the Committee will turn to Question 7433, put to me by Mr. Willoughby, they will observe that, 15 years afterwards, the Court of Directors ratified the pledges given by Mr. Elphinstone and Lord Clare, that "enams should pass to heirs as of right, without need of assent of a paramount power, provided the adoption be regular according to Hindoo law." This decision,

in the last resort, by the paramount authority in the government of India, is invaluable, not only for its finality, but as interpreting the word "sanctions" in the circulars of Mr. Elphinstone and Lord Clare to mean, not the assent of the Government, but the sanctions of Hindoo law; and this decision is in strict conformity with the exposition of Hindoo law by the most eminent jurists, such as Sir Thomas Strange, Colebrooke, and Ellis, and the precedents cited by Steele and Borrodaile.

In A.D. 1851, I succeeded to a place in the Government of Bombay for about three months; and if the Committee will turn to pages from 19 to 23 of the "Selections" to which I have referred, they will find that, during these three months, I recorded no less than five times my dissent from an expressed or even implied violation of these pledges of Mr. Elphinstone and Lord Clare, ratified by the Home Government, Appendix (A.)

Turning over two pages, I find the Secretary to Government in the Revenue Department telling the Government, in June 1852, on the authority of the Enam Commission, that the proceedings of "this Government and the Honourable Court of Directors, whenever they have involved this question in any case, appeared to have been invariably based on the principle that the sanction of Government, declared previous to adoption, has ever been requisite to give an adopted son any right to inherit an enam;" this statement being, as the Committee will observe, the most direct contradiction of the decision of the Court of Directors already quoted, and misrepresenting the proceedings of the governments of Mr. Elphinstone, Sir John Malcolm, and Lord Clare, to which I have invited your attention. This officer, reviewing the proceedings of Mr. Elphinstone's government, based on the information of Mr. Chaplin, adds that those of 1825 were, neither on the part of the Commissioner or the Government, so deliberate and well-considered as the rule that, the sanc-

tion of Government is essential to give an adopted son a claim for the continuance of an enam.

It is said by the author of "Thoughts on the Policy of the Crown towards India," just published, that Mr. Elphinstone is a man who "weighs out his words like gold; whose most hesitating beliefs are worth more than most men's confident assertions;" and yet of this man we are called upon to believe that he granted to the people of the Deccan the great boon of inheritance to private property by adoption without due deliberation and consideration. But even if he did so, the faith of Government was twice pledged and formally ratified in England, to carry out this measure; which is, therefore, on the principles on which India is governed, perfectly irrevocable.

How, then, was this law of prescription, and this privilege to inherit by adoption, displaced, in order to make way for the "rules" for adjudicating on enams, and ultimately for the Enam Act of 1852? It was done in this way: on the 12th March 1840, the Government issued a circular order that the law of prescription had been declared inapplicable to the zillah of Poonah; and although the Revenue Commissioner, in reference to this circular, expressed his presumption that no circular letter could control an Act of the Legislature, yet, as the proceedings of the revenue authorities could not be corrected by an appeal to the "civil courts," this illegal assumption of power on the part of the Government to interpret the law could not be disturbed; and accordingly I find the Enam Commissioner telling the Government that he had in vain sought for a single instance of a claim to exempt lands in the Deccan from rent having been adjudicated according to the law of prescription; in other words, the Government declared the law set aside, and when their servants acted on that declaration, the Enam Commission adduced this departure from the existing law as a proof that the law had been set aside. Whereas, although the Govern-

ment retained in its own hands the interpretation of the code for one year after its promulgation, the interpretation of the law thereafter was vested in the Sudder, or Supreme Court, and the circular of Government was therefore as waste paper; and of this the Enam Commissioner was so well aware that, in preparing the preamble and first section of the Enam Act, he did it (to employ his own words), "in such a manner as to prevent its terms from contradicting the opinions of either those who may agree, or those who may disagree with him;" that the law of prescription did not apply to the new provinces. His arguments on this point will be found in page 140 of the "Selections," Appendix (B.) Had his interpretation been the interpretation of the Sudder Court, it would have been law; but, as it is, it is as much waste paper as the Government circular; and accordingly the remembrancer of legal affairs at Bombay told the Government that, as the office of Enam Commissioner was not one recognised by the regulations, it was better that the Government should "keep him out of sight."

The Government having, as they supposed, thus set aside the law of prescription, proceeded to legalise the Enam Commission by passing the Enam Act. The privilege of inheritance by adoption was set aside in this way.

The Enam Commissioner told the Government that I, as a member of the Government, had asserted that the general practice under the Bombay Presidency had been to allow the holders of enams to dispose of them without any restriction, and had positively asserted such a practice to have prevailed during the period which, of all others, afforded the best and strongest evidence that had been found in existence, at the termination of the Peishwa's rule; and therefore it seemed to be of great importance that the Government of India and the Honourable Court should have the real facts of the case before them; and he added that,

"the principles on which the Deccan was settled were, in point of fact, precisely the reverse of those described by the Honourable Mr. Warden:" the result of which was, that the Court of Directors, revoking the ratification they had given in 1848, on the 2nd January 1855, wrote as follows to the Government of Bombay: "We are decidedly of opinion that in no case should the alienation of an enam be recognised for any term exceeding that for which the present holder and his heirs may possess an interest, and that the eventual right of Government to resume the revenue on the extinction of the family of the original grantor should be carefully maintained;" "from which it results," says the Enam Commissioner, "that no adoption tending to the perpetuation of alienations of public revenue of this description can hereafter be recognised."

I have shown the Committee that the description questioned by the Enam Commissioner, on which this unfortunate order was based, was not *my* description, but the description of Mr. Elphinstone, founded on inquiry at an early period after the conquest of the Deccan; the description of Sir John Malcolm, based also on local inquiry and the most extensive experience of any of those statesmen who settled the Peishwa's country; the description of Lord Clare; and, lastly and above all, the description of the Home Government itself. However erroneous their description may be, it was the foundation on which the faith of the British Government was pledged to its Indian subjects, and—irrevocable at any time—to revoke it after 30 years, was calculated to shake their confidence in the justice of that Government. "The cruelty of the process," to adopt the language of Mr. Mangles, (Question 1899), before the Committee, while speaking of resumptions, "has resulted from the delay in carrying it out; it ought to have been done shortly, sharply, and decisively." I feel that I need add nothing to such a concession by such high authority in confirmation of

my own opinion, expressed in the words: "The objection I take to the Enam Commission is, that time alone had established prescriptive titles, and what was done was done too late; that is my objection to the Enam Commission."

Having thus shown how much I had understated the case against the Enam Commission, I proceed to advert, *seriatim*, to Captain Cowper's paragraphs.

Captain Cowper opens para. 3 with reference to a volume of Selections, No. XXXI., as showing that I took a prominent part in India in discussions relating to alienated revenue; on referring to this volume, which I had never seen, I found it to relate entirely to surinjams, or life grants, intended to uphold the personal dignity of feudal chiefs, as distinguished from grants of land in fee simple (see my Answers 6136, 6137 before the Committee last Session). The Committee will rememember that, on your putting your first question to me regarding the Enam Commission, some doubt was expressed as to whether the question was relevant to the subject of colonization; and most certainly I could not have been examined regarding surinjams. As, however, Captain Cowper has interspersed his paper with allusions to "errors" of mine about surinjams, the only object of which is my depreciation in the estimation of the Committee, I annex, as Appendix (C.), a short review of that volume, from an article in the "Quarterly Review," ascribed to a distinquished oriental antiquarian and author, who went to India to obtain information on the spot; to which I will only add that, having from my earliest years in India belonged to "that school of Indian politicians, who have always maintained the importance of keeping up the independence and dignity of native states, whose view the whole course of recent events has confirmed, as against the modern theory of annexation,"* as early

* Lord Stanley. See *Times*, 12th February, 1859.

as about 1832 I remonstrated with the Bombay Government against an order they sent me to resume all surinjams as the holders died. This remonstrance led to a reference to Mr. Elphinstone, according to whose liberal views, as contained in his answer, the surinjam lists were remodelled; it fell to me to prepare one set of lists, but as this arduous task was executed during the intervals I could snatch from the labours of a political and judicial office, I told the Government it must needs be that it contained errors, and, accordingly, they made my successor revise and verify my work. As a rule, this gentleman (Mr. Brown) confirmed my recommendations; but the Enam Commission, professing to detect frauds and errors, after some years, reopened the subject. I had reason to believe that the native officials had withheld information, and misrepresented some of the cases, and thereby deliberately deceived, first, myself, and two years afterwards my successor; and I advised the Government to confront our chief native official with the chief native official of the Enam Commission. The death of the former prevented his offering any explanation on the points brought forward; and, although it may be doubtful whether lists prepared in 1844 and confirmed in 1847 should have been disturbed in 1855, I recommended the Government to inquire into all cases in respect to which fraud was imputed, though I differed altogether from the Enam Commission, in respect to some decisions which they would have disturbed, on other grounds. With this one remark, I dismiss this volume about surinjams.

I will not waste your time and mine by answering the statement in Captain Cowper's 7th para., that most of the proceedings of the Bombay Government, connected with exemption from assessment, were those of Mr. Elphinstone himself; the foregoing paragraphs have answered this imputation on an illustrious man, whom Sir John Malcolm, in his minute from which I

have already largely quoted, says, "The privileged classes in the Deccan were instituted by Mr. Elphinstone. This Order was regarded by him with anxious solicitude till the day of his embarkation, and he went to his native country accompanied by the strongest testimonies of their regard and gratitude."

Para. 11 ascribes to Mr. Elphinstone the distinction in respect to prescription between the older provinces and those conquered from the Peishwa, and "to no one else." I have shown that he made no distinction except the one so often referred to, viz., the power of appealing to the civil courts against the revenue authorities; which distinction should, as recent events have shown, and as I told the Committe, have ceased, when Mr. Elphinstone ceased to be at the helm.

In para. 12, Captain Cowper questions my historical accuracy in saying that the Peishwa "abdicated." I beg him to read the 6th chapter of the 2nd volume of the Memoirs of Sir John Malcolm, entitled "The Surrender of the Peishwa," in which he will find the author describing Sir John Malcolm as ignorant whether the Peishwa was advancing intent on war or peace, making his military dispositions and writing to the Government that the voluntary *abdication* of his power was an object far more desirable than either his captivity or death; and the first article proposed to him was that he should resign, for himself and successors, all right, title, and claims over the government of Poonah, or to any other sovereign power whatever.

These negotiations were four months later than the date of Mr. Elphinstone's proclamation, but this proclamation was written as an accompaniment to that pressure of the army on the Peishwa which led to his abdication.

In para. 13, Captain Cowper quotes the proclamation where it promises that "enams will be protected;" which absolute promise Captain Cowper seems to consider qualified by the expression "as far as is just and

reasonable," which I do not believe to be the correct construction of the passage. The words, "as far as is just and reasonable," belong to the last member of the sentence, viz., "and all religious sects will be tolerated, and their customs maintained, as far as is just and reasonable;" and I find Mr. Elphinstone interpreting this part of his own proclamation in a dispatch which he wrote on the 25th October 1819, as follows: "It having been promised by the proclamation of Sattarah that all enams were to be continued, all collectors were authorised to confirm those of all persons who should make their submission before a certain day fixed by proclamation, and subsequently all enams were confirmed, even those of persons who had failed to make their submission; although it is probable that many lands are held without authority under this denomination, it did not seem expedient to excite alarm by a scrutiny of the tenure before the inhabitants had acquired confidence in our justice and moderation. I, however, fixed rules for determining on all claims that might be questioned, and those rules may hereafter be applied more extensively when a survey should have been commenced. The principle of those rules is to confirm all enams held up to the war, if granted by the Peishwa, or those of his officers whom he intrusted with powers; to resume all granted by inferior officers since 1803, and all granted by patals within the last 30 years, unless authorised or admitted in accounts with the Peishwa, and to restore all resumed in the same manner since 1803."*

In contrast with the foregoing words of Mr. Elphinstone, Captain Cowper, in his 15th para. (his 14th requires no remarks), tells the Government that one of Mr Elphinstone's first acts was to impress upon his

* I have not succeeded in obtaining an entire copy of the dispatch from which I have quoted, but I have reason, from my own recollection and otherwise, to believe it genuine, and the Committee may readily verify it by moving in the House for a copy. I quote it from a Bombay newspaper.

subordinates that no enam, not held at the breaking out of the war, was to be restored, and that I left the Committee to understand that Mr. Elphinstone confirmed each holder of alienated land or recipient of an allowance found in possession; my words are, "my impression is, that if he found the right recognised, and "the person actually in possession, he confirmed the grant;" being, in other words, what Mr. Elphinstone said of his own rules, viz., "that they confirmed all enams held up to the war, if granted by the Peishwa or his officers intrusted with power."

Passing over para. 16, I come to para. 17, in which Captain Cowper objects to my assertion as most erroneous, that a great number of hereditary rights to land were confirmed, and that these confirmed rights were fast disappearing in the Bombay Presidency. On the first point I have just quoted Mr. Elphinstone himself, in confirmation of which, I may add, that I find his successor, Sir John Malcolm, telling his readers, on the authority of Mr. Nesbit, a distinguished member of the Madras civil service, and brother (as I believe) of an Honourable Member of the Committee, that upwards of 20 lacs, or £200,000 per annum had "been alienated for ever." As regards the second point, it is not disputed by Captain Cowper that inheritance by adoption is, as a rule, at an end; and when I was asked (6154) whether, as the grantee is not allowed to sell enams, and as the power of adoption is not allowed, does it not follow that in time all enamdars will disappear from the Bombay Presidency? I answered that they would disappear, fortifying my assertion by what has already happened in respect to surinjams, to which adoptions do not take place, although otherwise made "hereditary in the fullest sense of the word." It follows, therefore, that if no fresh enams, as a principle, be made, and no succession to them by adoption be allowed, the enamdars, like the surinjamdars, will in

time disappear; and what I told the Committee was strictly accurate.

In para. 18, Captain Cowper says that the inquiry, the necessity of which had been at the conquest of the country recognised by Mr. Elphinstone, did not take place "for many years afterwards." These four words are conclusive against Act XI. 1852 (the Enam Act); for, by the efflux of these "many years" alone, all defects in titles to enams, situated in the country conquered in 1817, had been cured. The Government had neglected their own interests to their own wrong, and other means of taxation should have been sought than those which violated the law and the pledges deliberately given by Mr. Elphinstone, Sir John Malcolm, Lord Clare, and the Court of Directors.

In para. 19, Captain Cowper says that the Enam Commission was established to confirm all *bonâ fide* alienations. I have just shown that time alone had done that which was committed to this Commission, and that the infraction of the previously acknowledged right of adoption must lead to the extinction of every single enam.

In para. 20, entitled, "The real character of Act XI. of 1852," Captain Cowper tells the Government that "throughout the old provinces, in which titles to enams have been and still are adjudicated by the ordinary courts, proof has always been thrown on the alleged enamdar." The first Enam Commissioner knew better than that; and if the Committee will turn to page 139 of the "Selections," they will find him telling the Government that the application of the law of prescription to the Deccan would be unjust, as "the proof of realisation of revenue (which realisation is the only bar to exemption) is to be thrown upon Government, and that it would be utterly impossible to prove such realisation." The words I have quoted are part of a despatch from that officer, advising the Government as

to the necessary provisions of the Enam Act, and warning them against throwing the *onus probandi* on the Government, as he found it in the old provinces. Captain Cowper concludes this para. by reiterating that the Enam Act throws the *onus probandi* on the Government. On my examination, this Act and especially the provisions relating to the *onus probandi* were fully discussed; it is a question of construction, on which the Committee is fully competent to pass a judgment; but I have lately met with the opinion of a barrister-at-law on my construction of the Act in this respect,* and I place, in the Appendix (D.), a review of this Act by Mr. Dickinson, of whose qualifications I told the Committee. He practised for several years at the bar of the Queen's and Company's Supreme Courts, with distinction to himself and benefit to India. I beseech the Committee to read his pungent remarks, compared to which what I have said of the Enam Commission Act and the *onus probandi* is mere milk and water. In respect to the authenticity of this paper, Mr. Dickinson writes me, that he has a very indistinct remembrance of the enam cases that came before him; but, as regards the substance of the remarks, he does not doubt they are correct in the main, and even if used *qua* advocate, he confesses, he entertains the same feelings now that he has put off his gown.

In para. 27 Captain Cowper tells the Government that Act XI. of 1852 is less stringent than the "rules"

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* The amount of badgering which Mr. Warden underwent in his second examination before the Colonization Committee (Fourth Report, pages 29 and 46), at the hands of the director members of the Committee, Messrs. Mangles and Willoughby, for this simple assertion, is almost incredible. The process is, that the holder is called upon to prove his title; he rests it, in the first instance, on possession, and to the appeal to the district officer's accounts, *i.e.*, to evidence in the Government's own hands, to show that he, or those he claims from, have held free of rent for the required space of time. If there is no evidence to the contrary his title is confirmed. Of course this is an *onus probandi* laid upon him; his only privilege being, that his possessory title is to be deemed *primâ facie* sufficient, without proving the origin of it. Messrs. Mangles and Willoughby are both now members of the Council for India.—"Thoughts on the Policy of the Crown towards India," page 257.

for 12 years previously in force; but these "rules" so often alluded to, were those administered by an Enam Commissioner, who was "not recognised by the Regulations," and of whom the Remembrancer of legal affairs at Bombay told the Government it was better that "he should be kept out of sight." Page 127 of the Selections.

In para. 28 Captain Cowper informs the Government that what I call the only liberal provisions in the Act were guaranteed by Mr. Elphinstone's proclamation, and scrupulously observed from that day. I can only regret that all his other liberal provisions have not been equally scrupulously observed. He adds, that throughout my evidence I ignore the fact that Act XI. of 1852 was passed to secure the continuance, not the resumption, of every real enam. But I have endeavoured to show the Committee that a "real enam," according to the existing law of prescription, is one that had been in possession of an enamdar 30 years; while a real enam, according to the Enam Act, is one that has been in possession of the enamdar 102 years, and accordingly, in the return of the results of the operation of the Commission, of 6,913 decisions, 2,948 only declare enams hereditary; and even this hereditary right will prove ultimately useless from the non-recognition of heirs by adoption.

In para. 29 Captain Cowper says that two-thirds of the enam cases "must and will be dealt with summarily;" pleasant process for the enamdars! and to this he adds, in reference to my having said the Enam Commission moved at a snail's pace, that nothing was said of the working of the ordinary courts, to which the enam inquiry ought, according to me, to be made over. But in answer (6097) to the question, "Do you think it is desirable that a more simple and a cheaper course should be introduced?" (into the courts of justice) I answered, "I do; and that I was impressed with the idea that the mode of proceeding under Regulations was burdensome

to the natives;" and referred from memory to a report of mine to the same effect, my accurate recollection of which Captain Cowper has confirmed by kindly quoting the part of it to which I referred.

In para. 31 Captain Cowper objects to my having talked of the impolicy, injustice, and ill effects of depriving men of their landed estates, and says I ought to have known that occupancy had never been interfered with, as I was a member of the Government which issued a circular to the effect that occupancy was not to be disturbed. The boon alluded to is about the same as telling the Duke of Bedford to pay his rents into the Treasury; but his right of occupancy as a tenant for life should not be interfered with; and his ejection, however intrinsically unjust, to adopt the words of Captain Cowper in respect to the ejection of the enamdars, "would affect but a very small portion of the community."

I have now reached that part of Captain Cowper's paper in which he places in juxtaposition my remaining statements, which he calls "open to question," and "the real facts." I feel that I have already wearied the Committee, at the same time that I have, I hope, defended successfully the ground on which I took my stand, viz., that the Enam Commission is based on a rigorous and partial law, and supported by a system, in respect to adoptions, which involves a violation of British faith, pledged by Mr. Elphinstone, Sir John Malcolm, and Lord Clare, and ratified by the Court of Directors; and although this mass of details has for its object my depreciation in the estimation of the Committee, rather than follow him *seriatim* any further, I will now request the Committee to peruse this portion of Captain Cowper's paper, and if it appear to shake my statements on the real points at issue, to permit me, by cross-examination, to fortify that, in respect to which Captain Cowper has made an impression on their minds.

On one or two points only will I speak. Inheritance

by females is denied. I explained to the Committee, on the authority of Mr. Elphinstone, that by the laws of Menu, in default of male heirs, "the widow steps in and adopts," and so continues the male line; but of course no mention of females is, as a rule, found in Hindoo title-deeds, though they are sometimes mentioned. Captain Cowper acknowledges, para. 45, that Mahomedan grants are specifically made to sons and daughters; why, then, are Mahomedan daughters' rights ignored by the Enam Act? The first Enam Commissioner was, however, quite familiar with the mode of female inheritance; and at page 154 of the "Selections" the Committee will find him advising the Government to alter the phrase in the Draft Act, "a grandson, or male heir of the body of a grandson of the original grantee," into the words, "a grandson in male descent;" "otherwise, should the grandson in possession at the introduction of the present Government be a *daughter's* son," the prescriptive title would be transferred from the family of the grantee to that of his daughter's husband.

Captain Cowper says in one place that orders or decisions of the Government have never been questioned in any court of law. This is true as regards enams in the Deccan, and untrue as regards those in Guzerat; and it is the making "fish of one and flesh of another" that I so much complain of. Captain Cowper is also, I believe, mistaken in supposing that the Privy Council cannot receive an appeal in any case, however trivial, if it think proper to exercise that power. In respect to the qualifications of the Enam Commissioners and their assistants, I have nothing to say, except that they are wanting in that essential qualification, judicial training. I say essential, because the Committee heard how Mr. Mangles deprecated the idea that the enam judges in appeal in Bengal were other than judicial officers of long and uninterrupted experience on the bench; and within the last month we have seen a gentleman wanting in this qualification placed on the judgment-seat in

England, and displaced by the public voice, expressed through the House of Commons, in twenty-four hours.

I did not refer to Major Wingate (6075) with respect to the danger of extending the Enam Commission to Guzerat; but I find the "Quarterly Review" telling its readers, in the article extracted in the Appendix, that when the rebellion broke out, its introduction into Guzerat, which had been previously contemplated, was at once abandoned, and some of the confiscated estates given back, and Major Wingate did not advocate even the principle of compromise with the landholders of Guzerat without referring to the possibility of discontentment thereby excited, of which, under a compromise, he had not the slightest apprehension. We were talking, however, not of compromise, but of carrying the Enam Commission in its integrity into Guzerat.

We come now to what Captain Cowper calls "the former and existing practice of succession by adoption;" but, even if Mr. Elphinstone and Sir John Malcolm had described the practice as inaccurately as Captain Cowper supposes, the faith of the British Government had, as I have shown, been pledged by them to a particular course, from which, in justice, we could not swerve.

At page 36 Captain Cowper has placed, in three parallel columns, what he calls three assertions of mine; the first, viz., "an adopted son can have no claim to inherit an enam," was, the Committee will observe from the preceding paragraph 39, not my assertion, but the assertion of the Deccan Commissioner, Mr. Chaplin, whose records were under my charge, and from which I was bound faithfully to report to the Government. The second assertion is an echo of Mr. Elphinstone's decision as to the practice to be followed by the British Government. The third is an echo of Sir John Malcolm's account of the practice under the Peishwa, who, exacting a succession duty, was obliged to that end to require at least notice of proposed adoptions; and, being

a priest as well as a king, he could interfere even in respect to the rite.

At page 39 Captain Cowper quotes me as an authority against inheritance by females, in a judgment delivered by me as a judge of the Sudder Court; the judgment seems sound, but not relevant to the point now in hand; the claim to which the judgment refers, related to real property and religious perquisites, the perquisites of course following religious rites, which could not be solemnised by a female.

In respect to the saleable value of a ryot's land held of the Government, Major Wingate has spoken authoritatively (7974, &c.).

Lastly, Captain Cowper quotes Sir Thomas Munro in refutation of my description of a title-deed to an enam, but the two descriptions are in convertible terms. I say "language is exhausted to express the fulness of the conveyance, but that an Indian monarch will resume to-day that which he granted yesterday;" and Sir Thomas Munro says, "though granted while the sun and moon endure, they are frequently resumed at short intervals." The number of old grants, however, that we find in existence, show that resumption was not so much the rule as the exception.

I have now reached Captain Cowper's review of what he calls my connexion with past educational proceedings. At page 238 of the "Quarterly Review," No. 207, the Committee will find my assertions confirmed;* and if

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* "Young men, who have passed through an Examination scarcely inferior, in the variety and difficulty of its subjects, to those of our English Universities, are treated with haughty contempt, or, at best, with condescending civility by a youth fresh from an English School, who has just managed, by cramming or interest, to get an Indian appointment, and who is taught, the moment he puts his foot on Indian ground, to look upon the 'niggers' as of a race so inferior in every respect to himself, that contact with them amounts almost to contamination. Their thirst after knowledge, whether for its own sake or for the object of obtaining employment, is unbounded. No school in England would show such anxious, painstaking and intelligent pupils, such perfect discipline and order, and so complete an absence of punishment, as are seen in a Government or Missionary School in India. For the College Department, in addition to a more advanced course in the Native Languages, we have the highest branches of

Captain Cowper had been educated at Haileybury, he would have known that there, as everywhere, the diligent study, and the idle "cram."

Captain Cowper next takes exception to my calling Hindostanee a political and colloquial language, and says it is an unknown tongue. In contradiction of this last assertion, I beg to refer the Committee to Major Wingate's evidence, Answer 7845. I called it political, being the language spoken by distinguished Indian statesmen in their intercourse with the native princes, and colloquial, in contradistinction to the written Hindostanee of Northern India.

In the 42nd page Captain Cowper descends to a personality. I am most unwilling to speak of myself, but if he had added to the assertion that I had no knowledge of any one of the languages, the fact that I was president of the examination committee, before which he passed in Mahratta; and that Sir John Malcolm, in his "Administration of India," speaks of me as having conducted all his intercourse with princes and chiefs, and having translated and disposed of upwards of 1700 native petitions for him, he would have given the Government a more accurate notion of my qualifications in this respect.

His assertion at page 43, on so simple a matter as the relevancy of my remark on the Sudder Court is incorrect; it was first made in a minute as a member of the Government, dated 5th May 1852, in a comparison instituted between the Queen's and Company's courts.

The Government of Bombay, in sending home this paper, speaks of my description of the objects of the Enam

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English literature, including Milton, Shakspeare, Histories of India and England, the Moral Sciences, Justinian's Institutes, Whateley's Logic, Astronomy (Herschell's), Mechanics (Young's), Hydrostatics (Webster's), Abercrombie's Works on Moral Philosophy, and those of many other writers on Physics, Law, Mathematics, including Spherical Trigonometry, Differential and Integral Calculus, &c. And it is the young men passing through such examinations as these who are to get places worth fifteen shillings or a pound a month, and are to be scowled at as 'niggers' by the new-fledged Civilian or boy Ensign just arrived from England."—Quarterly Review, No. 207.

Commission and of the Enam Act as incorrect. A perusal of the foregoing and of the many able and lucid articles which have appeared in the public journals in support of what I told the Committee, will, I trust, induce his Lordship the Governor of Bombay to alter his opinion.

Lord Elphinstone adds, that I have impugned the honesty and justice of the Legislature and of the executive Government. I disclaim both. That the executive Government had been led away from the path prescribed by the code, and the pledges of Mr. Elphinstone and his successors, there can be no doubt; but it is equally certain that, if the case had been placed before the Government and the Legislature in all its bearings, Act XI. of 1852 would never have become law. I am as much interested as his Lordship in upholding the reputation of a Government to which I twice belonged, and under whom I took a prominent part in carrying out the principles on which the territories of the Peishwa were settled. Lord Elphinstone is no more responsible than I am for Act XI. of 1852, and I will venture to say that, if the draft of it had been proposed to the Government, of which he was president and I was a member, it would have been rejected; and if the Government of 1851 had listened to my remonstrances in Council against setting aside the privilege of adoption, so solemnly granted, the life of the Enam Commissioner, Mr. Manson, would have been spared to his country and his family; and his murderer, the chief of Nurgoond, secure in the continuance of his line by adoption,* and strong in his allegiance to the Government which had kept faith with him, would not have suffered an ignominious death.

In respect to the great mischief which my evidence was calculated to do in a country where insurrection was

* The Nurgoond estate was called a suwasthen, or a grant in perpetuity; *see* Elphinstone's Report on the Deccan. Appendix, page 35.

still smouldering, I have to say that the season of my evidence was not of my choosing. The same thing was said by political opponents of Mr. Disraeli's brilliant speech, to which I referred in my evidence. But it was the duty, as it appears to me, of every one, who had the power and the opportunity of doing so, to speak at so awful a crisis what he believed to be the truth; and as to the mischief done, I will be judged by the result. No sooner had my evidence been thoroughly discussed, than the Secretary of State for India announced to the House of Commons, even before the information had reached him officially, that something in the nature of compromise between the Government and the holders of enams, by which the title to the lands would be confirmed on the payment of a moderate yearly sum, was in progress of arrangement at Bombay; and, as regards Madras, his Lordship enunciated the general principles to be adopted, in his apprehension, by Her Majesty's Government as follows:—"To respect absolutely undisturbed succession for a certain period of years, not in any case as a rule totally to resume any enam, even where the title is found to have been originally acquired by fraud, unless the holder has been a party to that fraud; where the title is invalid, not by any acts of the holder, that fact to form the basis of a compromise between the holder and the Government; and, on the condition of a moderate payment, he could receive what would be in the future a title which could not be disturbed; and in regard to limited tenure, held subject to a contingent of remainder to Government on failure of heirs male, to commute this claim for money." *

Beneficial results such as these are the surest tokens of the character and tendency of the evidence I had the honour to lay before you last session.

I have, &c.
(signed) JOHN WARDEN.

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* *Times*, 15th February 1859.

Appendix (A.)

The Revenue Commissioner "endeavoured to show that under the Peishwa's government, the existing native governments of West India and the British Government, the right of the supreme power to permit or to prevent adoptions, as regards inheritance of official rights of every description, has always been asserted, and never questioned."

42. The Right honourable the Governor (with whom the Honourable Mr. Bell has concurred) has observed, that "if the rules are made generally known, and the Revenue Commissioners should see that they are, by the collector, the publication of any special notification would appear to be unnecessary."

But the Honourable Mr. Warden has given it as his opinion, that "until the Government receives the final orders of the Honourable Court of Directors, to be issued after hearing from the Government of India, it cannot be even said to be the rule that adoptions to the inheritance of the enams (the power to sell which proves them to be private property) require sanction."

"On the 3rd June 1825, this Government, in a letter to the Commissioner in the Deccan, 'admits as a general rule in the Deccan, that children adopted with such forms and sanctions as may have been usual, should succeed to enams, or whatever may be considered private property.'

"The letter from which I quote, and which was always familiar to me, as containing the priciples on which we settled the Deccan, the previous proclamation of a principal collector notwithstanding, has just been sent to this Government by the Honourable Court, and I certainly consider that it will be a violation of the terms conceded to the people of the Deccan at the conquest to lower the standard of enams to that of jagheers, and resume them from sons adopted without sanction."

43. With his letter of the 4th March 1852, the agent for sirdars has submitted a memorandum from Ambabaee and Geerzabaee, widows of Sheoram Gopal Raja Bahadoor, of Malligaum, soliciting the continuance of certain wutuns, enams, and babs to their adopted son Gopal Rao.

45. In a minute (concurred in by the Honourable Mr. Bell) recorded in this case under date the 13th March 1852, the Right honourable the Governor stated it as his opinion, that "the adoption not having been recognised, the pecuniary allowance of 7,000 rupees cannot be continued to the son."

46. In his minute, dated the 18th March 1852, the Honourable Mr. Warden has observed, that "the confirmation or otherwise of the adoption, affects the question of the continuance or otherwise of the surinjam only.

"The pecuniary payment is distinctly stated in the title-deed to be an hereditary grant in lieu of wutuns ceded in exchange, and must, I apprehend, descend, as a matter of course, to the adopted child."

47. Upon this, the following minute has been recorded by the Right honourable the President, under date the 22nd March 1852, subscribed to by the Honourable Mr. Bell:—"Assuming that the right as wutnoree is clearly established, it by no means follows we need recognise the adoption. The permission of Government is necessary before an adopted son can succeed to property held from the State."

48. In a further minute, dated 25th March 1852, the Honourable Mr. Warden has remarked: "Some correspondence between the government (when Mr. Elphinstone presided) and the Commissioner in the Deccan has been received by the last mail from the Honourable Court of Directors on this very point, and to which it might be well to refer before disposing of this case."

51. The Honourable Mr. Warden has stated his opinion (minute dated 25th March 1852), "that in the

case of enams it is not necessary to the validity of an adoption that it be sanctioned."

53. The following minute has been recorded on this letter by the Right honourable the Governor, with whom the Honourable Mr. Bell has concurred: "Inheritance of the deceased Myput Raos' share by the nephew, whom his widow proposes adopting as a son, allowed." The above minute has been subscribed to also by the Honourable Mr. Warden, who has, however, remarked: "She was, I amagine, entitled to adopt to the inheritance of an enam without permission."

54. In a report, made under date the 22nd March 1852, on a petition presented to Government on the 27th February 1851, by one Huree Anunt Hardukur, the Collector of Tanna stated: "The land claimed by petitioner was enjoyed by Anunt Bhut-bin Gunesh Bhut Hurdukur, who having died on the 4th of June 1850, it was ordered by the late Collector, Mr. Law, to be resumed, which has been done.

"2. It is true, as stated by the petitioner, that Anunt Bhut, previous to his death, had petitioned for the continuance of the land in question to his adopted son, the petitioner; but his request was negatived by Mr. Law, on the ground of the adoption not having been sanctioned by the ruling power.

"3. The Collector sees no cause to recommend interference with the above decision."

55. The Right honourable the Governor has proposed that the petitioner be informed that his application cannot be complied with;* but the Honourable Mr. Warden has, in a minute dated 6th April 1852, stated: "I am not aware that the adoption to inheritance to enams requires sanction; to require such sanction is contrary to established usage, as recognised in the Deccan by Mr. Elphinstone."

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* Government circular, dated 19th November 1842, No. 3368.

9. Having thus stated my reasons for thinking that the rules of Chapters IX. and X., of Regulation XVII., ought not to be applied in the new provinces, I shall try to explain why I consider that they do not; but before doing so I would mention, in anticipation of my exposition of this result, that though my own opinion is what I have just stated, I have considered it right, in preparing the preamble and first section of the amended draft Act now submitted, to endeavour to do so in such a manner as to prevent its terms from contradicting the opinion of either those who may agree, or those who may disagree with me in this matter.

10. My first reason for supposing that the rules of Chapters IX. and X. do not apply to the new provinces is, that the only mode of enforcing them was purposely withheld by Regulation XXIX. of 1827, section 7, and Regulation VII. of 1830, section 2, &c. It may of course be said, that as the law was not suspended in terms, though the means of enforcing it were, it is still as much law as if it could be enforced; but I cannot think so lowly of the framers of Regulation XXIX. of 1827, and VII. of 1830, as to imagine that they intended by those Regulations to introduce a law with the intention of its remaining law, while they expressly enacted a reservation which must make it practically null. I would rather think that they intended, by taking steps for preventing the enforcement of the law in question (when generally introducing the Regulations into the new provinces), to make the whole of the law inapplicable in practice, as it is in equity.

11. My next reason for supposing that this was the intention of Government is, that I have in vain sought for a single instance of a claim to exempt lands having

been adjudicated according to the rules of chapter IX. and X. of Regulation XVII. of 1827. This is of itself a strong fact, and I think it greatly corroborates the argument stated in the preceding paragraph; for it must be supposed that Government, who framed Regulation XXIX. of 1827 and VII. of 1830, if they had thereby intended to introduce the procedure, &c. of Regulation XVII. into the new provinces, would have adhered to it; whereas every decision I have been able to find (and they are very many) is made not only without reference to the rules in question, but in a manner irreconcilable with their provisions; and this has been the case from the time of the introduction of the regulations generally into this province until the present hour.

12. Again, there are many declarations by Government, both express and implied, which show that the rules in question were never looked upon by their framers as law in the new territories.

Appendix (C.)

"In the Bombay Presidency, especially in the Deccan, the alienations amounted to a considerable portion of the revenue; and a Commission, called the "Inam Commission,"* was appointed to inquire into them. The principles laid down for its guidance were—1. That a surinjam (alienated revenue), granted before A. D. 1751, or held in commutation for anything so granted, should be considered hereditary; 2. That those granted be-

* The term "Inam" applies strictly to an endowment for religious, charitable or educational purposes.

tween A. D. 1751 and 1796 should be continued to the holder at the introduction of the British rule in 1817, and for one generation further, with a pension of half the net proceeds of the surinjam to the third generation; and, 3. That all surinjams granted after 1796 should be continued to the holder at the introduction of the British rule, after his death a pension of half the net proceeds being paid to the next generation. The Inam Commission commenced its inquiries in 1851, 34 years after we had taken possession of the Deccan, certain investigations by other officers having, however, previously taken place: it has not yet concluded them; consequently proofs of possession and of title for above 100 years are required to establish an hereditary right, and that in a country which has been over and over again swept by war and civil commotion, and notwithstanding the assurances to the contrary implied by Mr. Elphinstone's proclamation on the annexation of the territories of the Peishwa! Moreover, uninterrupted enjoyment for far shorter periods had established a prescriptive right, which we believe, in the opinion of some of our ablest English lawyers, was complete as against the Company. Powers such as have scarcely ever been conferred on any tribunal, or any body of men, are given to the Commissioners; they can send their agents with the police, at any time of the night or day, into the houses of those who are in the receipt of alienated revenue, to search for and seize documents, for which neither a receipt nor a list need be given. There is even no reliance to be placed upon the decision of previous authorities. Surinjams admitted by Mr. Brown in 1847 were subsequently re-inquired into, and disallowed by Capt. Cowper in 1855.*

"Contrary to every rule and principle in law and equity, the East India Company, the plaintiff, consti-

† *See* correspondence relating to the scrutiny of the revised surinjam and pension lists, Bombay, 1856 (printed for Government).

tuted itself judge in its own cause; young men utterly wanting in judicial training and experience, captains in the army or boy civilians, were appointed to the Commission: the greater the ingenuity they displayed in upsetting claims, the greater their chance of future advancement; every surinjam disallowed was so much revenue gained; appeals to higher authorities were only answered by a reference to those who had decided in the first instance, and were ready to insist upon their first decision; redress was consequently hopeless; such appeals as were made to the Privy Council in England against decisions of their resumption commission, ended in their reversal.

"The traveller in the Deccan will find the proceedings of the Enam Commission the first and gravest cause of complaint against the Government. So general and alarming had become the spirit of disaffection it had engendered, that it was brought suddenly to a close when the rebellion broke out; its introduction into Guzerat, which had been previously contemplated, was at once abandoned, and some of the confiscated estates have been given back. But the mischief has been done; and it will take a century, if we remain so long in India, before confidence in our good faith and justice will be restored. The feeling against us has been increased by the fact, that in villages belonging jointly to the Company and native princes, as, for instance, on Holkar's frontier, we have confiscated the surinjams of those who hold land under us, while they have been respected on the other side of the boundary line.

"There can be no doubt that many frauds had been committed, and the Government had been deprived of much revenue to which it was justly entitled; but the inquiries into titles should have been instituted at once on our taking possession of the Peishwa's territories, and should have been confided, not to inexperienced servants of the Company, whose claims to promotion depended on success in confiscation, but to a tribunal

whose legal knowledge was unquestioned, and whose independence was beyond suspicion. It would, however, have been far more politic, and more advantageous to the State, if, instead of forfeiting rights which had been established by long enjoyment, we had proposed a tax of some kind upon them, either in the form of a yearly payment or of a succession duty. A proposal to this effect had been urged upon the Government by several of its ablest servants; and such a tax was by no means unknown under native sovereigns."

Appendix (D.)

I. *Concerning the Inam Act itself.*

"Government have obtained an Act quite contrary to the spirit of all regulations and statutes for quieting long possessions. They are the judges in appeal in their own cases; they are the framers of their own law; and, instead of appearing as plaintiffs in a court of law, to oust rights of long standing, and possessions which all the usual limitations of time would cover, they force the actual possessors of land into the unfavourable position of plaintiffs. The law is quite unilateral; it is very arbitrary as regards the owners of land, who have been in undisturbed possession for years."

II. *Concerning the Commission and its Procedure.*

"Not only is the court instituted for the trial of the case interested in deciding it against one party, the enamdar (for the first tribunal is an officer subject to Government, and the ultimate tribunal on appeal is

Government itself, the other party in the cause), but no distinct and acknowledged grounds are put forward on the part of Government which the enamdar, whose possession is to be disturbed, has to meet. In all judicial inquiries it is of the very essence of justice that certain distinct issues should be raised between the litigant parties, so that evidence and argument may be applied to those, and those alone. The very reverse of this occurs in this species of inquiry. No defence or pleas are set up by Government for seeking to dispossess an enamdar of his long enjoyed possessions, and thus the Enam Commissioner, instead of being in the position of an impartial judge, is almost necessarily forced into the position of an advocate attacking the weak parts of the opposite party's case, and yet putting forward no distinct case of his own. Thus, if it is implied that Mr. Reeves' letter is not binding on Government, if Government were on the record, as they are in reality, and interested parties to the suit, they could not put forward such a defence without subjecting themselves to all the odium which attaches to a repudiation of authority exercised with their knowledge, and acquiesced in for years without observation, and only repudiated to advance their own interests. And if a defendant should escape observation from the judge for urging such a plea, he would still feel the restraint of public comment."

III. *Concerning its operation in a case under review.*

"The Government found the Swamee in possession as enamder in 1827, and leave him in undisturbed possession until 1839. In 1839 Annajee purchases the title, and still the Government make no objection. Further, in 1842, Annajee's title, as a purchaser from the Swamee, and as the owner in enam of the villages, is formally brought to the notice of Government, and not only not objected to, but Government deal with him as the owner, and effect an exchange of villages. There is nothing concealed in this.

"Yet now, in 1852, a person who can show an undisturbed possession for at least a quarter of a century; who, with the tacit sanction of Government authority, has purchased the property for a large sum of money; who has actually submitted his title to Government, and Government have accepted it, and taken the property so purchased in exchange for Government villages—is to be ousted out of his position at the suit of Government, who now for the first time discover their long unknown rights."

IV. *The case under review.*

"This is surely a grievous injustice; and were the rights of Government clear, they could not with any propriety be enforced at such a private sacrifice. But it is confidently hoped that the Enam Commissioner will not now confiscate rights consecrated by long and undisturbed possession, and acknowledged by Government, and which cannot be disregarded without subverting those principles of justice on which the laws of property are founded."

V. *Opinion of the Commissioner's Decision.*

"The consequences of an adverse decision are so serious to the holder, who has been brought up on the faith of a certain inheritance being his, and has been confirmed in that faith by the conduct of Government, and of such little consequence to the Government, who have never been influenced by the idea that the property now claimed belonged to them, that the judgment should incline to the former. There can be no doubt how a court of law would decide if this were a case between individuals; and Government is certainly not entitled to greater consideration than private individuals. The principles of law and justice are universal."

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